936

Computer Software

ESPO Contract 936

Issue No.1

ESPO USER GUIDE

Contract Period: 1 March 2009 to 31 January 2010

EASTERN SHIRES PURCHASING ORGANISATION Barnsdale Way Grove Park Enderby Leicester LE19 1ES

The contract schedule

This Schedule provides the details for Direct Order/Direct Supply Contract Number 936.

A revised 'Issue' number is allocated to the Schedule each time supplier or pricing information is updated. Each new issue provides at the foot of the page, a description of the revisions concerned and a date on which they become effective.

Contract scope

The supply and delivery of a range of computer software packages and associated services for corporate and academic use. In addition to providing for Microsoft application licensing, the contract also offers anti-virus/security software, other commercial off-the-shelf and educational software.

Supplier/pricing information

Full contact details of the awarded suppliers are shown highlighting the geographical region for which they are awarded.

Pricing, where provided, excludes VAT but includes delivery charges (assuming minimum order quantities are observed) relating principally to delivered prices within the ESPO Consortium area only; delivery to other areas may incur a surcharge.

Contract pricing may be subject to change.

How to order

By reference to **www.espodealingdirect.org** check you have the latest issue of the Contract Schedule. Contact your chosen supplier direct and place your order/enquiry, quoting **ESPO Contract 936**.

Ensure you receive confirmation of the current price structure for delivery to your specified location.

Performance

If you are unhappy with any aspect of the contract, please contact the ESPO Buyer, Nick Holland on **0116 265 7942** or email **n.holland@espo.org**

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Contact Details

Nick Holland (Buyer)
Information & Communication Technology (ICT)
Eastern Shires Purchasing Organisation
Barnsdale Way, Grove Park, Enderby,
Leicester, LE19 1ES

Tel: 0116 265 7942

Fax: 0116 294 4384

Email: n.holland@espo.org

Please note this is Version 1 of the Framework User Guide. As explained within this guide the framework will be regularly reviewed, and therefore subsequent versions of the guide may replace this version during the lifetime of the framework.

For the most up to date version of the guide, please visit our website www.espodealingdirect.org, or contact Nick Holland (as above) for more details.

SECTION 1 – USING THE FRAMEWORK

1. Introduction

Eastern Shires Purchasing Organisation (ESPO) is a local authority purchasing and distribution consortium, jointly operated by the county councils of Cambridgeshire, Leicestershire, Lincolnshire, Norfolk and Warwickshire and the unitary authorities of Leicester and Peterborough City Councils.

ESPO has established a framework of suitably experienced, qualified and resourced suppliers to provide Software and Associated Services in a number of areas, available for use by local authorities (and other bodies where applicable) and other public sector bodies nationally.

A tender process was conducted; inviting bids in relation to the provision of Software and Associated Services. The tender process allowed bidders to indicate their particular areas of specialism and the resultant framework is divided into lots to reflect these areas of specialism. There are four lots (categories) available for use as indicated in the table below. The framework will commence on 1st March 2009 and will be in place for a period of 1 year with the option to extend this by a maximum of up to a further 24 months. Clients may select from 4 categories of lots which are as follows:

Product Categories

1. MICROSOFT PRODUCTS
2. ANTI VIRUS SOFTWARE
3. COMMERCIAL OFF-THE-SHELF (COTS)
4. EDUCATIONAL SOFTWARE

The formally awarded Suppliers for each of the framework categories shown in the table above are listed in Section 2 of this document. Contact details for the Suppliers can be found in Section 3 with a quick reference guide provided in Section 2.

2. Establishing the Framework

2.1 General

ESPO, as a Central Purchasing Body[1], has established the terms and conditions which will apply to any call-off arrangements by customers during the period of the Framework[2] (commencing 1st March 2009). ESPO reserves the right in exceptional circumstances to vary the composition of the Framework. For example, if a supplier fails significantly to perform as required they may be removed (see Section 7 - Monitoring the Framework).

The Framework permits clients to commission business from suppliers on an ad-hoc basis against tendered rates **without re-opening competition**. It essentially comprises a standing list of approved suppliers, separated into 4 lots, from whom clients can select the most appropriate on a case by case basis, as required.

In the event that the client is unsure of the duration of service required to deliver a project or customer's requirement, or that the services required demand a considerable investment of resource, then clients may wish to consider the merits of re-opening competition, and further guidance in conducting such further competition is given in Section 3.2.2 below.

It is anticipated that day to day transactions (including undertaking secondary further-competitions, the appointment of suppliers to specific jobs, and delivery of and payment for services) will all be conducted directly between the client and the supplier.

In establishing this framework, a standard set of end user terms and conditions was included (see Section 4) and these terms and conditions will apply to any work undertaken under this framework. Successful suppliers have been advised that these conditions will be the default conditions unless the client is advised otherwise at point of placing an official order and accepts such amendments.

In the event that a client is unable to identify a suitable category of product/service supply within the Framework, the client should in the first instance contact ESPO to seek further advice.

2.2 Evaluation of Tender submissions

Evaluation was conducted in relation to each of the 4 specific categories, resulting in the each category being made up of five suppliers who were the highest scoring organisations and as such were awarded a position on the framework within the relevant category.

Tenders submitted in response to this market engagement were evaluated by officers of ESPO against a set of pre-determined evaluation criteria including but not limited to price, customer service, quality assurance, organisational standing and service delivery.

[1] As defined in The Public Contracts Regulations 2006
[2] In accordance with regulation 19 of The Public Contracts Regulations 2006

3. Using the Framework

3.1 Benefits of using the Framework

Using the Software framework can bring a number of benefits to clients:

- Clients can either call off from the framework, or re-open competition within it, removing the need for clients to conduct full tender exercises or lengthy supplier evaluations each time they have a Software or Associated Service requirement, saving both the time and cost associated with procurement exercises.
- The established Framework is fully compliant with the Public Contracts Regulations 2006.
- Terms and conditions are established to underpin the framework
- The Framework will be managed and monitored by the relevant ESPO on behalf of our clients and your views and requirements will be taken into account when reviewing and developing the contract.

3.2 Commissioning requirements from the Framework

Clients can use the Framework in two ways when commissioning Software or Associated Service requirements; either to call off from the established framework on the basis of the tendered cost methodology submitted (see 3.2.1. below), or where a comparison of all the elements are not able to be made with the information available, to re-open competition by way of a further-competition (see 3.2.2 below)

3.2.1 Calling off from the Framework

The Framework has been established with tendered 'cost plus' pricing (Supplier's basic cost plus percentage mark-up) for each organisation. These prices will be applicable to any work commissioned under the Framework, and in calling off from the Framework, clients simply need to contact the supplier they identify as providing best value for money for the products or services they require. Clients will need to advise the supplier (ideally by way of a project brief) of the products/services they require, and the timescale within which they want the products/services delivered.

3.2.2 Conducting Further-competition

Should the client be unable to determine which supplier is able to provide best value for money from the prices/rates contained within this document or after contacting the buyer direct then the right is reserved for the client to re-open competition under this Framework[3].

[3] In accordance with regulation 19 (8) of The Public Contracts Regulations 2006

In order to adhere to The Public Contracts Regulations 2006 for re-opening competition[4], clients must follow the steps outlined below:

- The client must invite all suppliers who are a party to the Framework and who are capable of delivering the customer's particular requirement. In commissioning work therefore from this Framework, clients must invite all suppliers within the relevant lot (category) they wish to procure from, for example, if a client wished to procure a Microsoft licence, the client would need to invite all awarded suppliers within that category of the Framework to participate.

- The customer shall formulate a project brief containing full details of the work required. This should include as a minimum a set of outcomes the supplier is expected to deliver, and the timescale within which they are required to deliver the products/services.

- The customer shall send the brief to all suppliers within the category (either in writing or by email) inviting them to submit a tender, setting a time limit for the submission of written responses (which must be submitted in written format and not via email in order to adhere to point 4 below).

- The written responses should be kept confidential until the tender return deadline has passed.

- The tender submitted shall be evaluated in accordance with the award criteria set out during the initial tender process (listed below with original weightings). Although these criteria must be used, they may be refined to provide more specific detail and the weightings may be changed to reflect the needs of the mini-competition, but these changes in assessment must be communicated to all tenderers invited to compete at the initial stage and must not substantially change the specification laid out in the original tender. The requirement will be awarded on the basis of Most Economically Advantageous Tender

Criteria	**Weighting**
Price - Value for money.	**50%**
General Requirements – General Contract Operation, Delivery, Customer Care, Management Information, marketing.	**20%**
Methods Statements – Including Technical Support, Licensing Information, Sales Staff Training, Licence Audit & Consultancy, Returns Policy	**10%**
Lot Specific Questions	**20%**

4. Monitoring the Framework

As this is a framework, from which customers can call off or conduct mini-competitions, ESPO will not be involved in the day-to-day management of the suppliers and the products/services they provide. ESPO will however be closely monitoring the progress and performance of the arrangements throughout the entire duration of the framework to ensure that customer's requirements are being adequately met.

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In monitoring this contract, any feedback you wish to provide should be sent to Nick Holland (as per the contact details on page 3 of this document) or via the monitoring form in section 7 of this user guide

SECTION 2 - AWARDED SUPPLIERS FOR EACH CATEGORY

Lot / Supplier	Microsoft	Anti-Virus	COTS	Educational
Bytes	✓	✗	✓	✗
Civica	✓	✓	✗	✗
Insight	✗	✓	✓	✓
Phoenix	✓	✓	✓	✓
RM	✗	✗	✗	✓
Software Box	✓	✓	✓	✓
Trustmarque	✓	✓	✓	✓

SECTION 3 – SUPPLIER CONTACT DETAILS

BYTES

Bytes Technology Group
Europa House,
Barcroft Street,
Bury,
Lancashire, BL9 5BT

PRODUCT CATEGORY		
1.	**MICROSOFT**	✓
2.	ANTI VIRUS	✗
3.	**COTS**	✓
4.	EDUCATIONAL	✗

Tel: 020 8786 1522

Fax: 020 8393 6622

Contact: Becky Lawrence - Internal Support Executive

Email: espo@bytes.co.uk

Melanie Jackson-McPhail - Senior Licensing Consultant

Tel: 07951 062571 Email: espo@bytes.co.uk

Web: www.bytes.co.uk

'Cost Plus' Price Structure			
Lot	**Products**	**Corporate**	**Academic**
1.	**MICROSOFT**	+1.4%	+1.4%
3.	**COTS**	+4%	+4%

CIVICA

Civica Services Ltd
2 Burston Road
Putney
London
SW15 6AR

PRODUCT CATEGORY		
1.	**MICROSOFT**	✓
2.	**ANTI VIRUS**	✓
3.	COTS	✗
4.	EDUCATIONAL	✗

Tel: 020 7760 2800

Fax: 020 7760 2885

Contact: Kelly Humphreys – Key Account Manager

Email: espo@civica.co.uk

Web: www.licencetoclick.com

'Cost Plus' Price Structure			
Lot	**Products**	**Corporate**	**Academic**
1.	**MICROSOFT**	+0.99%	+0.49%
2.	**ANTI VIRUS** - AVG Products - McAfee - Sophos - Symantec - Websense - Other products	 +1.99% +1.99% +1.99% +1.01% +1.99% Varies by Product	 +1.99% +1.99% +1.99% +1.01% +1.99% Varies by Product

INSIGHT

PRODUCT CATEGORY		
1.	MICROSOFT	✗
2.	**ANTI VIRUS**	✓
3.	**COTS**	✓
4.	**EDUCATIONAL**	✓

Insight Direct (UK) Ltd
The Atrium
1 Harefield Road
Uxbridge
UB8 1PH

Tel: 0870 704 5301

Fax: 0870 704 6301

Contact: Roger Talbot - Contract Manager

Email: roger.talbot@uk.insight.com

Web: www.insight.com

'Cost Plus' Price Structure			
Lot	**Products**	**Corporate**	**Academic**
2.	**ANTI VIRUS**	+1.5%	+1.5%
3.	**COTS** - Adobe - Autodesk - Citrix - Computer Associates - Corel - IBM - Novell - Network Associates - Oracle - Veritas - VMware	 +2.0% +3.0% +2.0% +3.0% +3.0% +1.5% +2.0% +3.0% +3.0% +1.5% +2.5%	 +2.0% +3.0% +2.0% +3.0% +3.0% +1.5% +2.0% +3.0% +3.0% +1.5% +2.5%
4.	**EDUCATIONAL**	+4.0%	+4.0%

PHOENIX

Phoenix Software Ltd
Blenheim House
York Road
Pocklington
York
LS10 1HB

Tel: 0845 836 1303

Fax: 0845 836 1266

Contact: Ben Lopez

Email: ben-lopez@phoenixs.co.uk

Web: www.phoenixs.co.uk

PRODUCT CATEGORY		
1.	MICROSOFT	✓
2.	ANTI VIRUS	✓
3.	COTS	✓
4.	EDUCATIONAL	✓

'Cost Plus' Price Structure			
Lot	**Products**	**Corporate**	**Academic**
1.	**MICROSOFT**	+1.65%	+1.65%
2.	**ANTI VIRUS**	+1.65%	+1.65%
3.	**COTS**	+1.65%	+1.65%
4.	**EDUCATIONAL**	+1.65%	+1.65%

RM EDUCATION

RM plc
New Mill House
183 Milton Park
Abingdon
Oxon
OX14 4SE

Tel: 01235 826868

Fax: 01235 854903

Contact: Carol Ellis - Account Manager

Email: cellis@rm.com

Web: www.rm.com

PRODUCT CATEGORY		
1.	MICROSOFT	✗
2.	ANTI VIRUS	✗
3.	COTS	✗
4.	**EDUCATIONAL**	✓

'Cost Plus' Price Structure		
Lot	**Products**	**Academic**
4.	**EDUCATIONAL** - BlackCat - Crick - Dorling Kindersley - Granada Learning - Inclusive Technology - Longman Logotron - Softease - Semerc - Sherston - Tag - Widgit - RM	 +55% +55% +79% +55% +69% +55% +86% +55% +55% +43% +33% +86%

SOFTWARE BOX

PRODUCT CATEGORY		
1.	MICROSOFT	✓
2.	ANTI VIRUS	✓
3.	COTS	✓
4.	EDUCATIONAL	✓

SBL (Software Box Ltd)
East Moor House
Green Park Business Centre
Goose Lane
Sutton On The Forrest
York
YO61 1ET

Tel: 01347 812100 – Ext. 216

Fax: 01347 811220

Contact: Kevin Johnson - Business Development Manager

Email: kevin_johnson@softbox.co.uk Web: www.softbox.co.uk

'Cost Plus' Price Structure			
Lot	**Products**	**Corporate**	**Academic**
1.	**MICROSOFT**	+0%	+0%
2.	**ANTI VIRUS** - AVG Products - McAfee - Sophos - Symantec - Websense	 +2.0% +1.5% +2.0% +1.5% +2.0%	 +2.0% +1.5% +2.0% +1.5% +2.0%
3.	**COTS** - Adobe - Autodesk - Citrix - Computer Associates - Corel - IBM - Novell - Network Associates - Oracle - Veritas - VMware	 +1.5% +1.0% +2.0% +1.5% +1.0% +1.5% +1.0% +1.5% +2.0% +1.5% +2.0%	 +1.5% +1.0% +2.0% +1.5% +1.0% +1.5% +1.0% +1.5% +2.0% +1.5% +2.0%
4.	**EDUCATIONAL**	+2.0%	+2.0%

TRUSTMARQUE

PRODUCT CATEGORY		
1.	MICROSOFT	✓
2.	ANTI VIRUS	✓
3.	COTS	✓
4.	EDUCATIONAL	✓

Trustmarque Solutions Ltd
Trustmarque House,
Alpha Court,
Monks Cross
York
Y032 9WN

Tel: 0845 210 1510 Fax: 0845 210 1510

Contact: Richard Tull - Account Manager

Email: richard.tull@trustmarque.com

Web: https://transact.trustmarque.com/tms.webstore

'Cost Plus' Price Structure			
Lot	**Products**	**Corporate**	**Academic**
1.	**MICROSOFT**	+0.5%	+0.5%
2.	**ANTI VIRUS**	+1.9%	+1.9%
3.	**COTS**	+1.9%	+1.9%
4.	**EDUCATIONAL**	+1.9%	+1.9%

SECTION 4 - CONDITIONS OF CONTRACT – END USER AND SUPPLIER

These Order Contract Terms together with relevant Order comprise the contractual provisions which apply to the Order that is entered into between the Customer and the Supplier and which govern the provision of Software and Associated services to the Customer.

THIS AGREEMENT is made according to the Articles of Agreement

BETWEEN:

(1) **ESPO**

and

(2) "**The Supplier"**

WHEREAS:

A. The Customer wishes to purchase Software and/or associated services

B. The Supplier having been awarded Supplier status under a Framework Agreement with the Eastern Shires Purchasing Organisation will supply Software, maintenance and associated services in accordance with his obligations to the Customer

1. Interpretation

1.1 As used in this Agreement:

1.1.1 the terms and expressions set out in Schedule 1 shall have the meanings ascribed therein;

1.1.2 the masculine includes the feminine and the neuter; and

1.1.3 the singular includes the plural and vice versa.

1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.4 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.

1.5 In the event and to the extent only of any conflict between the Clauses and the Schedules or the Order, the Clauses shall prevail.

1.6 The definition of words and phrases throughout this Agreement are contained within Schedule 1 Appendix 1.

2. Supplier's obligations

2.1 The Supplier shall supply the Software and perform the Associated Services in accordance in all respects with the terms of this Agreement and the terms and conditions of the relevant Order

2.2 For the avoidance of doubt the Customer shall not be responsible for any Software or Associated Services that are delivered by the Supplier and are not the subject of a valid Order.

2.3 For the avoidance of doubt any terms that the Supplier may seek to impose and which in any way vary to contradict these Contract Order terms shall be excluded and not form part of the Order.

2.4 The Software to be supplied under the Order shall be delivered to the place specified and by the method stated in the Order, in such quantities or numbers and at such times as the Customer shall specify from time to time in the Order and in accordance with the terms of the Order. Where the Order identifies that delivery will be in accordance with an Implementation Plan, the Implementation Plan will be agreed between the Customer and the Supplier unless otherwise agreed in writing by the Customer, time for delivery of the Software and performance of the Associated Services shall be of the essence.

2.5 The Supplier shall ensure that the Software and Associated Services meet the requirements of the Specification and where the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that particular purpose.

2.6 The Supplier warrants to its best endeavours that the design, construction and quality of the Software to be supplied under the Order shall comply in all respects with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the Software is supplied.

2.7 All Software shall comply with the appropriate specification or code of practice of the British Standard Institution or any European equivalent if there is a specification or code current for the Software during the Contract Period.

2.8 The Supplier shall use its reasonable endeavours to provide, for the purposes of the Order, Software whose manufacture and use have the least practicable harmful impact on the environment.

2.9 The Supplier shall be deemed to have satisfied itself as to the sufficiency and correctness of the Charges. Unless otherwise expressly stated in the Order the Charges shall cover all the Supplier's obligations and everything necessary for the supply of the Software and the provision of the Associated Services under the Order.

2.10 Unless otherwise expressly stated in the Framework Contract or the Order no claim by the Supplier will be allowed for any addition to the Charges on the grounds of any matter relating to any document forming part of the Framework Contract or the Order or any ambiguity or discrepancy therein on which an experienced supplier could have satisfied himself by reference to the Customer or any other appropriate means.

3. Customer's obligations

3.1 The Customer shall select a Supplier for Orders in accordance with the criteria outlined in the Framework Contract

3.2 The Customer will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.

3.3 The Customer shall ensure the preparation of the Equipment ready for installation of the Software and/or Solution including provision of an appropriate electricity supply and/or network points as agreed with the Supplier.

3.4 The Customer shall make available staff to perform the Acceptance Tests (where applicable).

3.5 The Customer shall respond to any reasonable request for information from the Supplier.

3.6 The Customer will assign a Project Manager who will interface with the Supplier's Project Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Project Implementation Plan where such a plan is appropriate.

3.7 The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2006.

3.8 The Customer shall operate the Software in accordance with such reasonable requirements as the Supplier may make known to the Customer from time to time.

3.9 The Customer shall transport, handle, store and use optical and magnetic recording media and any other consumables in accordance with such reasonable requirements as the Supplier may make known to the Customer from time to time and shall use only such media or consumables which comply with specifications agreed between the Customer and the Supplier.

4. Licence to use software

4.1 Where the Order identifies the supply of Software the terms of this Clause 4 shall apply.

4.2 In consideration of the payment of the relevant Charges, the Supplier hereby grants to the Customer a non-exclusive licence to use the Supplier's Software. Such licence to use the Supplier's Software shall be perpetual and irrevocable.

4.3 In consideration of the payment of the relevant Charges in respect of Third Party Software supplied hereunder the Supplier shall procure, that the third party grants to the Customer a licence to use the Third Party Software provided that any terms of any licence (which shall be perpetual and irrevocable) shall not detract from the rights granted to the Customer under the Agreement.

4.4 The Customer shall be entitled to copy the Supplier's Software and Third Party Software in order to create an archival copy and a back-up copy of the same. When copying Software the Customer shall include the original machine-readable copyright notice, and a label affixed to the media, identifying the Software and stating: "This medium contains an authorised copy of copyrighted software that is the property of (the Supplier or the Third Party Software owner)."

5. Inspection of Premises

5.1 Following submission of an Order the Customer shall provide the Supplier with an opportunity to inspect the Premises, and the Supplier shall either:

5.1.1 satisfy itself that the Premises are suitable for the installation and operation of the Software and/or the provision of the Associated Services as appropriate; or

5.1.2 advise the Customer in writing prior to the date of delivery of the Software and/or provision of the Associated Services of any matter, or aspect of the Premises, which is inadequate or not suitable for installing or operating the Software and/or providing the Associated Services as appropriate.

5.2 The Supplier acknowledges that it is not entitled to recover any additional costs from the Customer which arise from any matter, or aspect of the Premises, which is not notified to the Customer in accordance with Clause 5.1.2.

6. Acceptance of the Software

6.1 The Supplier shall permit the Customer or authorised representatives to make any inspections or tests which may reasonably be required and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests of the Software or inspections shall constitute a waiver by the Customer of any rights or remedies in respect of the Software and, in particular, the Customer retains the right to reject the Software

6.2 Unless formal acceptance testing in accordance with clauses 6.6, 6.7, 6.8, 6.9, 6.10., 6.11 and 6.12 is identified as a requirement on the Order then in respect of Software supplied the Customer may by written notice to the Supplier reject any of the Software which fails to conform to the approved sample or fails to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Customer of the Software concerned. If the Customer shall reject any of the Software pursuant to this clause the Customer shall be entitled (without prejudice to other rights and remedies) either:

(a) to have the Software concerned as quickly as possible and in any event within 5 Working Days either remedied by the Supplier or (as the Customer shall elect) replaced by the Supplier with Software which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such remedy or replacement has occurred; or

(b) to treat the Agreement as discharged by the Supplier's breach and require a refund from the Supplier in respect of the Software concerned together with payment of any additional expenditure over and above the price incurred by the Customer in obtaining replacement goods in replacement provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Software.

6.3 The issue by the Customer of a receipt note for the Software shall not constitute any acknowledgement of the condition, quantity or nature of that Software.

6.4 Unless otherwise required in the Customer's Order, the Supplier shall guarantee the Software for 12 Months from delivery. If the Customer shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Software as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) as quickly as possible remedy such defects (whether by repair or replacement as the Customer shall elect) without cost to the Customer.

6.5 Any Software rejected or returned by the Customer as described in clause 6.2 shall be returned to the Supplier at the Supplier's risk and expense.

6.6 Where the Order identifies that formal acceptance testing is required and in any event in respect of Software supplied the Supplier shall, carry out formal acceptance in accordance with clauses 6.6, 6.7, 6.8, 6.9, 6.10., 6.11 and 6.12 during the Acceptance Procedures Period, make available the Software for the Acceptance Procedures to be performed.

6.7 The Customer shall accept the Software in accordance with the Acceptance Procedures.

6.8 The Acceptance Procedures shall be recorded as successful and the Supplier notified accordingly where all the relevant Acceptance Criteria are met.

6.9 The Acceptance Procedures shall be recorded as unsuccessful and the Supplier notified accordingly where any of the relevant Acceptance Criteria are not met.

6.10 If the Acceptance Procedures, in respect of any Software have not been recorded as successful pursuant to Clause 6.3 by the end of the Acceptance Procedure Period, the Customer shall have the right either:

6.10.1 to accept such part of the Software as the Customer may decide and pay a pro-rated Charge therefore or such other charge, as may be agreed between the parties;

6.10.2 without prejudice to its other rights and remedies, to extend the Acceptance Procedures Period for a period or periods, specified by the Customer, during which the Supplier shall correct the fault which caused the Acceptance Procedure to be recorded as unsuccessful; or

6.10.3 to terminate the Order (such termination to be without prejudice to the other rights and remedies of the Customer and the other obligations hereunder of the Customer and the Supplier).

6.11 In the event that the Customer extends the Acceptance Procedures Period for a period pursuant to Clause 6.10.2 and the Acceptance Procedures have not been recorded as successful by the end of that period, the Customer shall have the right either:

6.11.1 to accept such of the Software as the Customer may decide and pay a pro-rated Charge therefore or such other charge, as may be agreed between the parties;

6.11.2 to extend the Acceptance Procedures Period for a further period in accordance with Clause 6.10.2;

6.11.3 to terminate the Order (such termination to be without prejudice to the other rights and remedies of Customer and the other obligations hereunder of the Customer and the Supplier).

6.12 Without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Customer under the Order or otherwise, in the event that the Customer elects to terminate the Order pursuant to Clause 6.10.3 or Clause 6.11.3, the Customer shall be entitled to return any or all of the Software which has previously been accepted by the Customer for the Order and receive a full refund of any monies paid in connection therewith.

6.13 Notwithstanding the provisions of this clause 6 in the event the Customer uses the Software other than for the purpose of testing it or with the agreement of the supplier, the Customer shall be deemed to have accepted the Software.

7. Liquidated Damages

7.1 Where liquidated damages apply then without prejudice to any other remedies available to the Customer:

7.1.1 if the there is delay in delivery such that the Software is not delivered in accordance with the period identified in the Specification or such other period as may be agreed between the Customer and the Supplier then the Supplier shall pay to the Customer as liquidated damages for each day of delay the amount specified in the Order or if none is specified then a sum equal to one percent of the value of the Software ordered up to the end of the Liquidated Damages Period. Such payment shall be in full and final settlement of the Supplier's financial liability for any loss or damage incurred by the Customer during the Liquidated Damages Period, and

7.1.2 if the Software has not been delivered by the end of the Liquidated Damages Period, the Customer shall be entitled to claim any remedy available to it for loss or damage incurred by it thereafter.

7.1.3 if the Acceptance Procedures have not been recorded successful in accordance with clause 6.3 by the end of the Acceptance Procedures Period then the Supplier shall pay to the Customer as liquidated damages for each day of delay the amount specified in the Order or if none is specified then a sum equal to one percent of the value of the Equipment ordered up to the end of the Liquidated Damages Period. Such payment shall be in full and final settlement of the Supplier's financial liability for any loss or damage incurred by the Customer during the Liquidated Damages Period, and

7.1.4 if the Acceptance Procedures have not been recorded as successful by the end of the Liquidated Damages Period, the Customer shall be entitled to claim any remedy available to it for loss or damage incurred by it thereafter.

8. Associated Services Provision

8.1 The Supplier shall provide the Associated Services identified on the Order in respect of the Software as appropriate and in accordance with the Service Level Agreement. The Charges in respect of such Services shall be as detailed in the Framework Agreement or the current pricing schedule issued by the relevant Member Authority.

8.2 The Maintenance service shall commence on the day after the Software has successfully passed the Acceptance tests.

8.3 Without prejudice to any other remedies available, if the Supplier fails to provide the Maintenance Services in accordance with the Specification and the Service levels are not met then the Customer shall be entitled to Service Credits calculated in accordance with Schedule 2.

9. Title and Risk

9.1 Subject to Clause 9.2 below, title to and risk in the purchased Software shall vest in the Customer upon acceptance of the said Software in accordance with Clause 6 .

9.2 Title and risk in the Rented Software shall at all times remain with the Supplier who shall be responsible for all loss and damage to the Software.

10 Charges

10.1 In consideration of the supply of the Software and the performance of the Associated Services in accordance with the terms of the Framework Contract, these Order Contract Terms and the Order, the Customer shall pay the Charges calculated in accordance with Schedule 2 of the Framework Contract and published from time to time by ESPO therein and in accordance with the invoicing procedure and payment profile specified in Schedule 2.

10.2 Payment shall be made within thirty (30) days of receipt by the Customer (at its nominated address for invoices) of a valid invoice, in accordance with the provisions of Schedule 2, from the Supplier.

10.3 The Charges are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.

11. Recovery of Sums due

11.1 If any sum of money shall be due from the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement or any other agreement with the Customer.

12 Monitoring and Reporting

12.1 The Supplier shall:

12.1.1 appropriately manage the Software and Associated Services that it provides under this Contract;

12.1.2 be required to provide to the Customer such management information as it reasonably requires including but not limited to the information identified in Schedule 4.

12.1.3 on reasonable notice grant to the Customer's external and internal auditors access to any relevant data or documentation relating to the Framework Contract and Order and the supply of the Software and provision of the Associated Services for the purpose of carrying out an audit.

13 Supplier's Personnel

13.1 The Supplier shall select, employ, train, furnish and deploy in and about the performance of the Order only such persons as are of good character and who are appropriately skilled and experienced.

13.2 The Contractor shall comply with the requirements in relation to the recruitment of ex-offenders and disclosures under the Police Act 1997. The Contractor shall ensure that all employees, servants or agents engaged by him in the discharge of his obligations under this contract who may be required to work within school premises, or other sites occupied by children and/or vulnerable adults shall be appropriately checked by the Criminal Records Bureau and shall upon request by ESPO or Member Authority, produce evidence of such satisfactory disclosure.

13.3 The Supplier and the Supplier's sub-contractors, staff and agents shall comply with all reasonable requirements of the Customer at the Premises.

13.4 The Supplier shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of Clauses 13.1, 13.2 and 13.3 above.

13.5 The Supplier, its agents, sub-contractors and suppliers shall employ sufficient staff to ensure that the Software is supplied and the Associated Services are provided at all times and in accordance with the Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of staff is available to supply the Software and provide the Associated Services in accordance with the Agreement during staff holidays or absence through sickness or any other cause.

13.6 The Customer, acting reasonably, shall have the right to refuse access to the Premises at any time to any employee of the Supplier, its agents, sub-contractors or suppliers. The exercise of this right shall not diminish the Supplier's obligation of performance arising under the Agreement.

14. Warranties and Representations

14.1 The Supplier warrants and represents that:

14.1.1 at the Acceptance Date the Software shall meet the Acceptance Criteria and the requirements of the Specification and Tender;

14.1.2 unless otherwise agreed in writing by the parties at the Acceptance Date the Software shall operate in a normal office environment in accordance with the Specification;

14.1.3 the Customer’s possession, use and operation of the Software or the provision of the Associated Services shall not infringe any Intellectual Property Rights of any third party;

14.1.4 if appropriate, the Supplier has the full capacity and authority to grant the licences referred to in Clause 4;

14.1.5 the Associated Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

14.1.6 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;

14.1.7 subject to Clause 9.2 the Customer shall acquire title to the Software free from all encumbrances and the Customer shall have the right to quiet possession of the Software;

14.1.8 the Software shall be capable of operation and maintenance for at least 5 years from the Acceptance Date.

15. Insurance and Indemnity

15.1 Each party shall each indemnify the other against all damages, losses, costs, compensation or expenses arising from the death or injury of any person and against all loss or damage to any physical property, to the extent that the same are due to any act, default or negligence of that party, their sub-contractors, servants or agents and against all actions, claims demands or proceedings in respect thereof or in relation thereto.

15.2 Without prejudice to its liability to indemnify the Customer, the Supplier shall take out and maintain:

15.2.1 Public Liability insurance, which shall, for any one occurrence or series of occurrences arising out of one event, is not less than £10,000,000.

15.2.2 Product Liability insurance, which shall, for any one occurrence or series of occurrences arising out of one event, is not less than £10,000,000.

15.2.3 Employers Liability insurance, which shall, for any one occurrence or series of occurrences arising out of one event, be not less than £10,000,000.

15.2.4 Professional Indemnity insurance, which shall, for any one occurrence or series of occurrences arising out of one event, be not less than £5,000,000.

15.3 Subject always to Clause 15.1; in no event shall either party be liable to the other for:

15.3.1 loss of profits, business, revenue, goodwill or anticipated savings; and/or

15.3.2 indirect or consequential loss or damage.

15.4 The provisions of Clause 15.3 shall not be taken as limiting the right of the Customer to claim from the Supplier for:

15.4.1 additional operational and administrative costs and expenses howsoever caused; and/or

15.4.2 expenditure or charges rendered unnecessary as a result of any Default by the Supplier.

15.5 Subject to the provisions of clauses 15.1, 15.2, 15.3 and 15.4 the liability of either Party for Defaults shall be subject to the financial limits set out in this clause 15.5 (save where such damages relate to a claim for personal injury or death where the Party's liability shall be unlimited).

(a) in respect of the indemnity in clause 16 Intellectual Property Rights, shall be unlimited;

(b) for all loss of or damage to the property of the other including but not limited to premises, property or assets shall in no event exceed ten million pounds [£10,000,000].

(b) in respect of all other claims, losses or damages, whether arsing from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement the annual aggregate liability under the Agreement of either Party shall in no event exceed ten million pounds [£10,000,000].

16 Infringement of Intellectual Property Rights

16.1 The Supplier shall fully indemnify and hold the Customer harmless against all actions, claims, demands, proceedings, costs, charges and expenses (including legal fees on an indemnity basis) arising from or incurred by reason of any infringement or alleged infringement of any letters patent, designs registered or unregistered, copyright, trade mark, trade name or other Intellectual Property Rights including any wrongful use of confidential information by the use or possession of the Software or the Software or any part thereof provided by the Supplier or licensed by the Supplier to the Customer under the Agreement subject to:

16.1.1 the Customer promptly notifying the Supplier of any alleged infringement and, subject to sub-clause 16.1.3 below, allowing the Supplier at their own expense to conduct all negotiations for settlement or litigation;

16.1.2 the Customer making no admission without the Supplier's written consent unless and until the Supplier shall have failed to take over the conduct of the negotiations or litigation;

16.1.3 the conduct by the Supplier of such negotiations or litigation shall be conditional upon the Supplier having given the Customer such reasonable security as the Customer may require for the compensation, damages, costs and expenses for which the Customer may become liable. The Customer at the Supplier's expense shall give the Supplier all available assistance.

16.2 If the Software any part thereof becomes, or in the Supplier's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under sub-clause 16.1.1 above, the Supplier shall at its own expense negotiate to obtain the right for the Customer to continue to use the infringing items, if necessary by replacing, remove or modifying them, but without reducing their quality or ability to meet the Customer's requirements as specified by the Agreement.

16.3 The Supplier shall indemnify the Customer against all losses, costs, damages and expenses whatsoever during the period that the Customer is deprived of the use of the Software by reason of such negotiations, replacements or modifications the outcome of which will be confirmed by the issue of a Change Request which shall not entitle the Supplier to any addition to the Charges or any extension of the Order lead time.

16.4 The Supplier shall not be liable under sub-clause 16.1.1 and 16.1.2 above for any such infringement or alleged infringement which arises as a result of the including in the Software of any items supplied by the Customer or any use of the Software for a purpose or in a manner different to that specified in, or reasonably to be inferred from, the Agreement.

17 Operating and Maintenance Documentation

17.1 The Supplier shall supply the Documentation with the Software upon installation of the Software. All Documentation shall be of the latest variant and shall match all upgrades to the Software.

18. Termination

18.1 By the Customer:

18.1.1 The Customer may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

18.1.1.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Supplier or its Parent Company; or

18.1.1.2 the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or

18.1.1.3 the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

18.1.2 The Customer may at any time by notice in writing terminate this Agreement forthwith, if the Supplier is in Default of any obligation under this Agreement and:

18.1.2.1 the Default is capable of remedy and the Supplier shall have failed to remedy the Default within thirty (30) days of written notice to the Supplier specifying the Default and requiring its remedy; or

18.1.2.2 the Default is not capable of remedy.

18.3 Termination in accordance with this Clause 18 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any party.

18.4 In the event of any termination of this Agreement whether under this Clause 18 or otherwise, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Customer under this Agreement or otherwise, the Customer shall be entitled to:

18.4.1 return any or all of the Software or any part thereof which have not been accepted pursuant to Clause 6 and the Supplier shall give the Customer a full refund of all Charges paid by the Customer to the Supplier in connection with such returned items;

18.4.2 obtain a refund of any Charges paid by the Customer in respect of any Services which have not been performed by the Supplier in accordance with the terms of this Agreement.

19. Confidentiality

19.1 Each Party:

19.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

19.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

19.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Agreement:

19.2.1 is given only to such of its staff, sub-contractors and agents engaged in connection with the Agreement and only to the extent necessary for the performance of this Agreement;

19.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff, sub-contractors or agents otherwise than for the purposes of this Agreement.

19.3 Where it is considered necessary in the opinion of the Customer, the Supplier shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with this Agreement. The Supplier shall ensure that its staff, sub-contractors and agents are aware of the Supplier's confidentiality obligations under this Agreement.

19.4 The Supplier shall not use any Confidential Information it receives from the Council, Contracting Authority or the Customer otherwise than for the purposes of this Agreement.

19.5 The provisions of Clauses 19.1 to 19.4 shall not apply to any Confidential Information received by one Party from the other:-

19.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause);

19.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

19.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

19.5.4 is independently developed without access to the Confidential Information; or

19.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the EIR pursuant to Clause 22.

19.6 Nothing in this Clause shall prevent the Customer from:

19.6.1 disclosing any Confidential Information for the purpose of the examination, audit and certification of the Council's accounts

19.6.2 disclosing any Confidential Information obtained from the Supplier to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to the Agreement;

19.6.3 provided that in disclosing information under 19.6.2 the Customer discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.

19.7 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Agreement or any Order or disclose any information relating to or contained in the Agreement to any person who is not engaged in the performance of the Agreement.

19.8 In the event that the Supplier fails to comply with this Clause 19 the Customer reserves the right to terminate the Agreement by notice in writing with immediate effect.

19.9 The provisions of this Clause 19 shall apply notwithstanding termination of the Agreement.

20. Data Protection Act 1998

20.1 The Supplier shall at all times comply with the Data Protection Act 1998 including, where appropriate maintaining a valid and up to date registration or notification under the Data Protection Act 1998.

20.2 The Supplier shall not disclose Personal Data to any third parties other than:

20.2.1 to staff, sub-contractors and agents to whom such disclosure is reasonably necessary in order to perform the Agreement; or

20.2.2 to the extent required under a court order

provided that disclosure under clause 21.2.1 is made with the approval of the Customer and subject to written terms no less stringent than the terms contained in this Clause and that the Supplier shall give notice in writing to the Customer of any disclosure under clause 20.2.2 immediately it is aware of such a requirement.

20.3 The Supplier shall indemnify and keep indemnified the Customer against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this clause by the Supplier and/or any act or omission of any staff, sub-contractor or agent.

20.4 The Supplier is required to comply with the obligations set out in Principle Seven of the Data Protection Act 1998.

20.5 In this clause "Personal Data" means personal data as defined in the Data Protection Act 1998 which is supplied to the Supplier by the Customer therein or obtained by the Supplier in the course of performing the Agreement.

21. Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR)

21.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Customer (at the Supplier's expense) to enable the Customer to comply with these information disclosure requirements.

21.2 The Supplier shall and shall procure that its sub-contractors shall;

21.2.1 transfer any request for information to the Customer as soon as practicable after receipt and in any event within two working days of receiving a request for information; and

21.2.2 provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within seven working days (or such other period as the Customer requesting the information; and

21.2.3 Provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

21.3 The Customer shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information;

21.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and

21.3.2 is to be disclosed in response to a request for information and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer.

21.4 The Supplier acknowledges that the Customer may be obliged under the FOIA or the EIR to disclose information;

21.4.1 without consulting the Supplier; or

21.4.2 following consultation with the Supplier and having taken its views into account.

21.5 The Supplier shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

21.6 The Supplier acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with Clause 21.4.

22. Loss of the Software

22.1 Notwithstanding the provisions of Clause 9 the Customer shall only be liable for any loss of the Software or any part thereof supplied under the Agreement while they are at the Premises prior to acceptance of the relevant Software, if such loss is occasioned by the negligence or wilful acts or default of the Customer.

22.2 The Supplier shall, on being required by the Customer, make good any loss affecting the Software, whether such loss arises in the circumstances referred to in Clause 22.1 or otherwise, and shall notwithstanding such loss use all reasonable endeavours to proceed with and complete the installation of the Software and the performance of the Services in accordance with the Agreement. The Customer shall pay the costs of making good unless the loss is occasioned by the Default of the Supplier.

23. Damage to Equipment and Tools

23.1 All plant, tackle and tools at the Premises provided by or on behalf of the Supplier shall stand at the risk and be in the sole charge of the Supplier.

23.2 The Supplier shall be required to remove all such plant, tackle and tools which it brings to the Premises.

23.3 The Supplier shall ensure that all such plant, tackle and tools shall meet the minimum safety standards required by law.

24. Social Responsibility

24.1 The Supplier agrees that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation.

24.2 The Supplier shall in all matters arising in the performance of the Agreement comply with the provisions of the Disability Discrimination Act 1995 and any regulations made there under.

24.3 The Supplier shall in all matters arising in the performance of the Agreement comply with the provisions of the Employment Equality (Age) Regulations 2006.

24.4 The Supplier must comply with the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and shall ensure that they perform their responsibilities under this Agreement with due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relationships between different racial groups.

24.5 The Supplier shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving goods or services from, the performance of the Contract and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.

24.6 ESPO and the Customer shall be entitled at ESPO's and the Customer's expense to inspect such books, accounts and records belonging to the Supplier as are necessary to demonstrate compliance with clauses 24.1, 24.2, 24.3, 24.4 and 24.5 above.

24.7 The cost to the Supplier of complying with this Clause 24 shall be included in the Charges.

25 Corrupt Gifts and Payments

25.1 The Customer shall be entitled to cancel and terminate the Agreement and to recover from the Supplier the amount of any loss resulting from such cancellation or termination if the Supplier or any person on its behalf shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of the Agreement or any other contract with the Customer or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Customer or if like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Customer the Supplier or any person employed by the Supplier or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.

25.2 The decision of the Customer shall be final and conclusive in any dispute, difference or question arising in respect of:

25.2.1 the interpretation of this Clause 25; or

25.2.2 the right of the Customer under this Clause 25 to terminate the Agreement

26. Force Majeure

26.1 For the purposes of the Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.

26.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

26.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

26.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

26.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

27. Transfer and Sub-contracting

27.1 The Agreement is personal to the Supplier. The Supplier shall not assign, novate, sub-contract or otherwise dispose of the Agreement or any part thereof without the prior consent in writing of the Customer.

27.2 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

28. Amendments to the Agreement

28.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of ESPO on behalf of the Customer and by a duly authorised representative of the Supplier on behalf of the Supplier. No variation of the End-User Agreement shall limit or remove the Suppliers obligations under the Framework Agreement".

29. Communications

29.1 Any notice which either party is required to give to the other shall be given in or confirmed by writing and shall be sufficiently served if sent to the other party at its address specified in the Order form either by (a) hand, (b) first class post or recorded delivery or, (c) facsimile, or (d) electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.

29.2 Either party may change its address for service by notice as provided in this Clause 29.1.

30. Severability

30.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, ESPO and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

31. Waiver

31.1 The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

31.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

31.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 29.

32 Dispute Resolution

32.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within [20] Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the relevant ESPO member or Member Authority therein for mediation.

32.2 If the Parties fail to reach agreement within 25 working Days of reference to ESPO, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

33. Law and Jurisdiction

33.1 This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

33.2 This Agreement is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

34 End-User Responsibilities

34.1 The End User shall ensure the preparation of the Premises including building works ready for installation of the Software and/or Solution including provision of an appropriate electricity supply and/or network points as agreed with the Supplier.

34.2 The End User shall make available staff to perform the Acceptance Tests (where applicable).

34.3. The End User shall respond to any reasonable request for information from the Supplier.

34.4 The End User will assign a Project Manager who will interface with the Supplier’s Project Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Project Implementation Plan where such a plan is appropriate.

34.5 The End User shall ensure that all Orders are awarded in accordance with the provisions of the Agreement and in accordance with the Public Contracts Regulations 2006.

35. Entire Agreement

35.1 This Agreement together with the Framework Agreement and the Order constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referenced or referred to herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

SECTION 4 - DEFINITIONS

The expressions set out below shall have the meanings ascribed thereto:

1. "Acceptance Criteria" means the criteria for acceptance specified in Schedule 1-2, and any further criteria set out in the Order.

2. "Acceptance Date" means the day within the initial or any extended Acceptance Procedures Period when all the Acceptance Criteria are met and the Acceptance Procedures are recorded as successful.

3. "Acceptance Procedures" means the acceptance procedures in respect of the Software which shall include functionality tests, and specified in Schedule 1-2 and the Order.

4. "Acceptance Procedures Period" means the period within which the Acceptance Procedures must be performed.

5. "Associated Services" means the provision of maintenance services or other IT-related services ancillary to any service provided to the customer in accordance with this Agreement and any specific customer order.

6. "Agreement" means the agreement between the end user and the Supplier, comprised of the Clauses and the Schedules and Annexes thereto

7. "Confidential Information" means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

8. "Customer" means a Local Education Authority, School, College, Nursery or other Public Sector body whether a member Local Authority or customer of one of the organisations constituting the Pro5 group of professional buying organisations or otherwise.

9. "Default" means any breach of the obligations of either party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other.

10. "Documentation" means the user guide and/or operating manual such that the documentation is sufficient to enable the Customer to operate the Software and remedy basic faults.

11. "EIR" means the Environmental Information Regulations 2004.

12. "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner in relation to such legislation.

13. "Framework Agreement" means the Agreement between ESPO and the Supplier under which this contract is entered into by the Customer and the Supplier for the supply of Software or Associated Services

14. "Implementation Plan" means the plan to be developed by the Customer and the Supplier in accordance with Schedule 1-4 and which will contain a schedule of tasks to be done, the timescale for completion of those tasks, identifying the party responsible for those tasks, together with the milestones to be achieved and against which payment will be made.

15. "Incident" means any failure to meet the Functionality.

16. “Incident Report” means a report raised by the Customer in respect of an Incident.

17. “Internal Code” means machine readable software supplied as an integral part of the Equipment.

18. “Invitation to Tender” means the invitation to tender issued to the Supplier in response to a request following the publication of the OJEU notice for the procurement of the Software and Associated services.

19. “Liquidated Damages Period” means a period of ten working days

20. “Member Authority” means the contracting authority with responsibility for managing the Framework Agreement for the area in which the Customer is located

21. “Order” means an official order in such form as may be agreed by the relevant Member Authority and issued by the Customer to the Supplier in respect of the Software and Associated Services.

22. “Parent Company” means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. The term "Holding Company" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto.

23. “Premises” means the premises occupied by the Customer at which Software is to be installed or the Associated Services are to be supplied.

24. “Representative” means a representative of the Customer or the Supplier as appropriate appointed for the purpose of co-ordinating the preparation and performance of the Acceptance Procedures.

25. “Requests for Information” shall have the meaning set out in FOIA or any apparent “Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR.

26. “Software” means the Software to be supplied by the Supplier in accordance with the terms of this Agreement

27. “Supplier's Software” means the software in which the Intellectual Property Rights are owned by the Supplier.

28. “Tender” means the Supplier’s tender submitted in response to the Invitation to Tender and attached to the Framework Contract

29. “Term” means the period of (1) one year plus the option of a maximum of a further (2) two years from the Commencement Date.

30. “Third Party Software” means any software in which the Intellectual Property Rights are owned by a third party which is supplied by the Supplier hereunder.

SECTION 5 - CUSTOMER ORDER SELECTION CRITERIA

The process by which Suppliers are allocated an Order must be transparent and shall be in accordance with either Option 1 or Option 2 below.

Option 1: Apply the terms of the Agreement

This option applies where the Customer is able to identify the Supplier who provides the most economically advantageous offer for the particular Order.

The process for allocating the Order shall comprise a direct approach to the Supplier.

Where such Supplier is not interested in performing the Order then the Council should allocate the Order in accordance with Option 2.

Option 2: Hold a mini competition

This option applies when a Customer is not able to identify the Supplier who provides the most economically advantageous offer for the particular Order.

The process for allocating the Order shall comprise a mini competition involving all those Suppliers who have demonstrated that they are capable of performing the Order.

The Customer shall consult in writing the suppliers capable of performing the Order and they shall submit a tender in writing and/or attend at Customer's site for a presentation of the services or products offered in response to the Order requirements. The Customer shall set a time limit for the return of the tenders, which takes into account the complexity of the requirement.

The Customer shall keep each tender confidential and unopened until the expiry of the time limit set for return of tenders.

The Order shall be awarded to the Supplier who submits the best tender based on the award criteria specified.

Unsuccessful Suppliers will, if required, receive a debriefing.

SECTION 6 - END USER RESPONSIBILITIES

1. The End User shall ensure the preparation of the Premises including building works ready for installation of the Equipment and/or Solution including provision of an appropriate electricity supply and/or network points as agreed with the Supplier.

2. The End User shall make available staff to perform the Acceptance Tests (where applicable).

3. The End User shall respond to any reasonable request for information from the Supplier.

4. The End User will assign a Project Manager who will interface with the Supplier's Project Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Project Implementation Plan where such a plan is appropriate.

5. The End User shall ensure that all Orders are awarded in accordance with the provisions of the Agreement and in accordance with the Public Contracts Regulations 2006.

SECTION 7 – MONITORING FORM

FEEDBACK PROVIDED IN RESPECT OF: ……		
1.	Name of your organisation receiving product / services.	
2.	Name of Supplier providing products/services to your organisation?	
3.	Briefly, what kinds of products/services has the firm supplied to you?	
4.	What is the approximate value of business placed with the supplier?	**£**
5.	How did you identify use of this supplier within the framework?	By calling-off from within the category, or By conducting a further competition within the category
6.	Is this the first time you have used this supplier?	
7.	If No, on how many previous occasions have you used this organisation?	

8.	**YOUR OPINION OF THE SUPPLIER:** *Please indicate your assessment of the supplier by ticking the appropriate box for each of the following categories.*	**Excellent**	**Good**	**Adequate**	**Poor**	**No knowledge**	Comments, if any
	Overall satisfaction with performance of the supplier to meet the overall aims and objectives of the project brief and provide value for money?						
	Flexibility and co-operation of the personnel assigned to work with you (and your colleagues) on your project?						
	Professional competence demonstrated by the supplier, including the ability of the supplier to meet deadlines, budgetary levels and performance targets.						
	Ability of the supplier to provide suitably qualified and experienced individuals who have an appropriate understanding of customer's needs						
	Quality of the written reports, feedback etc produced by the supplier						
	Efficiency and cooperativeness of the supplier in dealing with any problems or complaints that occur						

9.	Are there any other comments you would wish to make concerning the supplier which you consider would be helpful to us in making an evaluation?

This reference in respect of (name of supplier)……is provided by:

Please print name:.....

On behalf of ……..…(name of your organisation)

Telephone number:.....

Signature:

Date:.....

Please return this form to Nick Holland, ESPO Buyer

- ***by*** **FAX on 0116 294 4384**
- ***b*****y E-MAIL to n.holland@espo.org**

Quick Reference Guide

Lot / Supplier	Microsoft	Anti-Virus	COTS	Educational
Bytes	✓	✗	✓	✗
Civica	✓	✓	✗	✗
Insight	✗	✓	✓	✓
Phoenix	✓	✓	✓	✓
RM	✗	✗	✗	✓
Software Box	✓	✓	✓	✓
Trustmarque	✓	✓	✓	✓